

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

AMAL M. SAYED AHMED)	
)	
Plaintiff)	
)	
vs.)	C.A. No.1:11cv752
)	CMH/IDD
LEBANESE BUTCHER, INC. et al.,)	
)	
Defendants.)	
)	

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Amal M. Sayed Ahmed, under Rule 37 of the Federal Rules of Civil Procedure, respectfully moves this Court to issue an Order compelling Defendant Lebanese Butcher, Inc. to produce documents responsive to Plaintiff's Document Production Requests 19, 20, 29, 30, and 35 and to provide sworn answers to Plaintiff's Interrogatory Nos. 7, 9, and 11-16, and to provide sworn answers to all of Plaintiff's interrogatories. In conformance with Local Rule 37(E), Plaintiff's undersigned counsel hereby certifies that he has conferred with Defendant's counsel, including by multiple emails. Counsel also spoke by telephone on December 30, 2011.

BACKGROUND

This is a Fair Labor Standards Act (FLSA) case, involving claims for unpaid minimum wage and overtime compensation due Plaintiff. This Second Motion to Compel is closely related to a previous Motion to Compel heard on December 16, 2011.

On December 16, 2011, the Court denied Plaintiff's original Motion to Compel as moot, after Defendant Lebanese Butcher, Inc. asserted that it had mailed Plaintiff discovery responses, without

objections, the previous night. See Documents 21-22.

However, Defendant's assertions were not accurate. Contrary to assertions in Court, Defendant's discovery responses had multiple objections. In many cases, there was no response beyond the objections. The discovery requests that had no response beyond an objection are covered by this Second Motion to Compel. Defendant's discovery responses are attached as Exhibit 1.

Defendant's objections were made far after the deadlines for such objections. Under Local Rule 26(C), any objections were due in October, but were asserted for the first time on December 15, 2011. Plaintiff provided further detail in her Memorandum of Points and Authorities supporting first Motion to Compel. Document 19.

The objections should be struck and Defendant ordered to respond, without objection. Defendant has waived the opportunity to object by not filing objections on a timely basis. See, e.g., Davis v. Romney, 53 F.R.D. 247, 248 (E.D. Pa. 1971); Perry v. Golub, 74 F.R.D. 360, 363 (N.D. Ala. 1976); Antico v. Honda of Camden, 85 F.R.D. 34, 35 (E.D. Pa. 1979).

The requests at issue are essential. For example, Document Production Request No. 35 seeks all documents related to Plaintiff's hiring. The time of Plaintiff's hiring is a key issue in the case. Defendant is asserting that Plaintiff worked only a few months for Defendant, although she received paychecks for a period of years.

Document Request No. 20 seeks all documents relating to labor

certification or Alien Employment Certification for Plaintiff. Plaintiff understands that Defendant made sworn statements in such documents inconsistent with its current position that Plaintiff worked for Defendant only a few months.

Some of the interrogatories at issue relate to affirmative defenses, such as a claim of exemption. Defendant has objected to answering interrogatories concerning the affirmative defenses.

CONCLUSION

Plaintiff respectfully requests that the Court order Defendant to respond fully, without objection, to the document production requests and interrogatories at issue. Plaintiff also requests that all late objections be struck and that Defendant provide sworn interrogatory answers.

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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